

not paid and that within 14 days after receipt of the letter legal action would be taken. Therefore, it is clearly evident that there is no dispute on this point that the Defendant paid a sum of \$5,000.00.

Before I deal with the question as to whether the Defendant at this stage could dispute the purchase price, I would deal with the contention of the Defendant that the purchase price was excessive in that the Nauru Cooperative Society was charging for the same make of car \$5,690.00. It is in evidence that witness Alan purchased a Valiant Regal in December 1976 for \$5,690.00 from the Nauru Cooperative Society. He has stated that it had no cassette or vinyl top. According to Ex. "P-1", the price of the Valiant Regal 4-door Sedan which the Plaintiff ordered for the Defendant had a number of accessories namely, laminated wind-shield, stereo-cassette player, styled wheels and automatic console shift. Apart from the fact that there is no evidence as to the landed cost of the vehicle to the Nauru Cooperative Society, it is quite clear that the vehicle purchased by the Defendant from the Plaintiff had a number of extras so that the contention by the defence must necessarily fail. I would also like to point out at this stage that there is no law in Nauru which restricts the selling price of any article. In the absence of misrepresentation or fraud on the part of the Plaintiff as to the type of vehicle sold, there has been a valid contract of sale.

I would now deal with the earlier question I raised as to whether the Defendant could challenge at this stage the reasonableness of the price. It is quite clear that the Defendant took delivery against the wishes of the Plaintiff, and it is equally clear on the evidence that the oral contract entered into between the Plaintiff and the Defendant was not on the basis of payment in instalments. The evidence reveals that the Plaintiff has been far too tolerant and has accepted instalments and has come to Court only when he realised that the balance sum of \$1,970.00 was not forthcoming. It is also the evidence of the Defendant that he did not inform the Plaintiff when he took delivery of the car that the purchase

price was excessive. In such circumstances what would be the act of a prudent and reasonable man? There is no doubt that a reasonable man would, after being informed of the price, return the car if he felt the purchase price was excessive. Witness Audoa's evidence is not of much help to the defence. Although he states that vinyl tops are more expensive than ordinary ones, he has not stated whether his car had the same accessories or not as the car purchased by the Defendant. There was a rather faint-hearted attempt by the defence to bring Nauruan custom into operation in this case as the Defendant stated that he did not inform the Plaintiff that the price was excessive as he was shy and that a Nauruan reacts in this manner. I say a faint-hearted attempt because this point was not pursued by the defence and there is only a bare statement by the Defendant on this point. There is no evidence before this Court of prominent and knowledgeable Nauruans to testify that in cases of this kind a Nauruan would react in the way the Defendant did. One cannot eat the cake and still have it. If the Defendant thought the price excessive and was too shy to inform the Plaintiff, which fact I do not accept, then he should have returned the car. I can see no rational grounds upon which it can be said that the Defendant has the right at this late stage to say that the price of \$6,970.00 for the car is excessive. He has by implication accepted the price by his own overt acts; acts of paying instalments towards the purchase price of the car right up to June 1977 whilst at the same time enjoying the full benefit of the use of the said vehicle. To come to any conclusion would lead to an injustice. It was not part of the oral contract that the Defendant should pay the purchase price in instalments. Indeed, there is the evidence of the Plaintiff that the Defendant agreed to pay the purchase price of the car after his mother returns from the Gilberts. At that stage of the transaction or later there was not even the faintest protest that the price was excessive. In my view the Plaintiff has been too tolerant in this transaction; which tolerance has been reciprocated by the Defendant in suddenly making his mind that he was not paying the balance

of \$1,970.00. Therefore, taking all the evidence into consideration, I am more than convinced that the Defendant has not acted in a fair and just manner and I hold that the Plaintiff is fully entitled to the balance of \$1,970.00. Accordingly, I give judgment for Plaintiff in a sum of \$1,970.00 with costs of action.

R. L. DE SILVA
Resident Magistrate

1st May, 1978.